



www.VoiceofGowanus.org

By Registered Mail and Email

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Mr. Breon Peace
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December 30, 2022

Dear Sirs,

By letters dated May 16, 2022, and June 14, 2022, Voice of Gowanus (VoG) requested that the USEPA Inspector General open a full investigation of multiple compliance and enforcement failures affecting the Gowanus Canal under Federal and State laws and regulations, including but not limited to the Comprehensive Environmental Response Compensation and Liability Act (CERCLA or "Superfund"), and the Clean Water Act (CWA).

As prior correspondence details, devastating effects from decades of compliance failure at Gowanus are being compounded by a planned 80-block rezoning that will likely add more than 30,000 additional residents to a sewer shed already burdened with compliance failures that include:

- A Superfund Listing improperly disaggregated from 33 Canal upland contamination sites in the NPL designation;
- Inadequate toxin removal and cleanup levels;
- An Impaired Water designation under CWA §303;
- Repetitious Combined Sewer Overflow (CSO) Enforcement Orders leading to a Long-Term Control Plan that has not prevented continued Impaired Status designation;
- Related failed Water Quality Standard setting and enforcement;
- Delayed construction of two CSO retention tanks which, as currently designed, will be grossly inadequate for the current rezoning of the Gowanus neighborhood according to USEPA Region 2; the fact that these tanks are undersized will have a direct and detrimental impact on USEPA's remedy of the Gowanus Canal;
- A Sewage Backup Administrative Order that has yet to prevent raw sewage in basements in Gowanus and surrounding neighborhoods;
- Premature construction releasing contaminants and threatening the integrity of Canal, groundwater, and soil cleanups throughout the Gowanus area.

Our prior correspondence described efforts at suppression of and retaliation against USEPA personnel willing to disclose important information to the Gowanus community regarding inadequate remedies of known sources of contamination to the Gowanus Canal that were improperly left out of the Gowanus Superfund designation.

Unfortunately, this pressure on USEPA to suppress information and allow immediate reuse of insufficiently remediated parcels left under NY State control is not just dealing with regulatory issues, correspondence, or personnel actions—it has now expanded to the USEPA Community Advisory Group (CAG) for the Gowanus Canal.

Voice of Gowanus is writing to you again regarding recently obtained information that identifies additional areas for investigation based on events transpiring since the prior request. VoG asks that this request for further investigation be considered in conjunction with the information and requests previously made.

Additional Factors and Information

At the CAG's December 1, 2020 meeting, USEPA Project Manager Christos Tsiamis spoke openly to the CAG about his concerns that dangerous toxins left behind on the uplands would recontaminate the work of the Gowanus Superfund Cleanup and expose the community to cancer-causing volatiles. Subsequently, the CAG has been discussing and passing several resolutions pushing for USEPA to take over the known operable units, which are known upland sources of contamination to the current USEPA Superfund work. We suspect that the CAG's outspokenness has been problematic for the USEPA Region 2 Administration.

In recent weeks, USEPA seems intent on obstructing the work of the CAG. At the November, 2022 CAG meeting, the CAG's designated neutral facilitator, Doug Sarno, and the USEPA's Community Liaison, Natalie Loney, instructed CAG members that the CAG is no longer in compliance, something that had never been mentioned before. In a December 4, 2022 email (attached) Mr. Sarno strongly suggested to the CAG that regular committee work "take a break during December and January."

Unbeknownst to the majority of the members of the CAG, of which some are also members of Voice of Gowanus, the Region 2 Administrator, Lisa Garcia, received correspondence March 28, 2022 (attached) signed by four CAG participating groups (Fifth Avenue Committee, Gowanus Canal Conservatory, Riverkeeper, and Park Slope Neighbors) objecting to CAG activities and including multiple demands.¹ These demands were predicated on the belief that the CAG should only be "focusing on what's going on between the banks of the Gowanus Canal."

The signatory groups demanded training and other actions, and further suggested USEPA withdraw its support from the CAG and somehow "reconstitute it" or develop other means of communication if the demanded changes were not accomplished to the signatories' satisfaction.

In November, Ms. Loney and Mr. Sarno insisted on the formation of a special "working group" subcommittee to restructure the CAG, including suggestions that go against the CAG's current charter that has been in place for twelve years. It is noteworthy that three of the four signees of the letter sent to Ms. Garcia are on that special newly formed subcommittee. Note that the November full CAG meeting, and the subsequent subcommittee meetings, were not open to the public as required by the current CAG Charter.

The EPA has become complicit in trying to dismantle the CAG by not informing the rest of the members of the true motivation of "restructuring." The March letter to Ms. Garcia from the four CAG signees should have been immediately shared upon receipt with the entire CAG, and been discussed with its membership for complete transparency.

Two of the signatories of the above-mentioned letter have clear conflicts of interest. Fifth Avenue Committee is an active participant in the development of upland properties on contaminated banks of the Gowanus Canal and

¹ It is the understanding of VoG that this letter received a response from the Regional Administrator. VoG requested copies of both letters, and was informed by the Region 2 Community Liaison for Gowanus that the request had to come through a Freedom of Information Act request. That request was then filed and remains pending.

receives funding support from the City of New York, one of the major Responsible Parties at the site. Fifth Avenue Committee has also indicated likely use of Federal funds for development projects on the former Citizens MGP site.

Gowanus Canal Conservatory (GCC) receives support from Responsible Party National Grid under its “Corporation and Foundation Partners” program (a primary PRP in both water and soil cleanup at Gowanus). GCC is also a potential participant in Natural Resource Damage programming for Canal restoration needed to supplement cleanup actions and will be a direct beneficiary.

Additional Areas for Investigation

In light of the above, VoG hereby requests investigation into the following issues in addition to those already requested in previous correspondence:

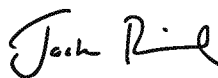
- Failure of USEPA personnel to disclose receipt of the March 28, 2022 letter from four members of the CAG, and USEPA Region 2 Administrator Garcia’s response.
- Direct influence by several conflicted CAG members and related PRPs on USEPA decision-making regarding regulation of upland parcel cleanups, including USEPA’s direct oversight authorities on key parcels of the former Fulton MGP site, while leaving the equally problematic former Citizens MGP site under the State of New York’s purview (where the Fifth Avenue Committee is directly involved with PRP NYC in developing 950 units of affordable housing and potentially a public school on what has been described by USEPA personnel as the most toxic, polluted site in the entire area).
- Retaliation against CAG members by interested parties with disqualifying conflicts to prevent discovery and dissemination of information regarding the sufficiency of the Superfund Cleanup between, along, under, and proximate to the banks of the Gowanus Canal as well as surface and ground water and airshed. The Gowanus Canal Superfund Record of the Decision states that any source of recontamination that will have an impact on the USEPA’s Superfund work and its remedy is under the purview of USEPA. Therefore, the CAG’s discussions about upland sources of contamination fall under its purview.

Voice of Gowanus would appreciate your acknowledgement to this and our prior correspondence, and for your attention to the ongoing enforcement failures at multiple levels of government. We continue to seek the necessary and legal enforcement action for the Gowanus Superfund and its known upland sources of contamination.

Sincerely yours,



Linda LaViolette
Co-Chair, Outreach Committee
Voice of Gowanus
linda@voiceofgowanus.org



Jack Riccobono
Co-Chair, Outreach Committee
Voice of Gowanus
jack@voiceofgowanus.org

Attached: March 28 letter to Ms. Garcia from 4 CAG Signatories

Cc: The Honorable Joseph R. Biden Jr.
The Honorable Chuck Schumer
The Honorable Kirsten Gillibrand
The Honorable Nydia Velázquez
The Honorable Jerrold Nadler
The Honorable Kathy Hochul



The Honorable Jabari Brisport
The Honorable Jo Anne Simon
The Honorable Marcela Mitaynes
Mr. Daniel Goldman
The Honorable Kathy Hochul
Administrator Michael Regan, EPA
Matthew Silverman, Assistant U.S. Attorney, Chief of Environmental Litigation, Eastern District, DOJ
Brenda Mallory, Chair, Council on Environmental Quality, Executive Office of the President
Matthew Tejada, Director, Office of Environmental Justice, EPA
Charles Lee, Senior Policy Advisor, Office of Environmental Justice, EPA
Lawrence Starfield, Acting Assistant Administrator, Office of Enforcement and Compliance Assurance
Regional Administrator Lisa Garcia, EPA Region 2
OIG Hotline

March 28, 2022

Ms. Lisa Garcia
Regional Administrator, Region 2
U.S. Environmental Protection Agency
290 Broadway
New York, NY 10007-1866

Dear Regional Administrator Garcia,

We write to you as representatives of founding organizational members of the Gowanus Canal Community Advisory Group out of deep concern about the current state of dysfunction plaguing the CAG, and to seek EPA's help in addressing issues that we believe pose serious threat to the CAG's future viability and how the EPA and its cleanup of the Gowanus Canal are perceived by the broader public.

Over the past year, CAG discussions have become increasingly hostile and unproductive, with members endlessly rehashing settled items, passing resolutions on matters not germane to the cleanup, and straying far from the CAG's stated mission to issues well beyond EPA's purview, to such a degree that we believe it's hampering the goals of the cleanup and the purpose of the CAG. Meetings and email exchanges have also become rife with bullying, rudeness, and disrespect, as well as racist and sexist language and behavior. Belligerent emails that originated within the CAG are now spilling over into harassment and threats against fellow CAG members, referencing CAG meetings, through emails sent beyond the CAG membership. This harassing behavior is also happening at the CAG committee level, where members with different viewpoints are often bullied and attacked verbally, absent the benefit of Doug Sarno's general-meeting facilitation, which at least aims to keep us focused on productive and measured discussion.

Furthermore, per EPA's guidance, *"Membership in the CAG should reflect the composition of the community near the site and the diversity of racial, ethnic, and economic interests in the community."* The initial formation process prioritized this diversity, but the increasingly hostile environment has caused a number of members to leave the CAG, and has effectively silenced diverse interests and identities. As a result, we've become less representative of the larger Gowanus community, both demographically and in attitudes about the CAG's mission. This has major implications

on the resolutions that are passed, how information is disseminated, and whose voices are heard.

Unfortunately, we've reached the conclusion that these problems cannot be fixed internally. Those of us who want to return to focusing on what's going on between the banks of the Gowanus Canal are now a small minority, and despite the CAG's overly complicated charter, there's no mechanism for removing members who are abusive to others or who repeatedly violate CAG rules or stray outside its mission. Even if such a mechanism existed, a number of members in the CAG's majority have increasingly ignored our own rules in furtherance of their agenda. As a result, we believe the only way to fix the CAG is for EPA to impose changes from the outside.

To that end, we'd like to offer a few recommendations:

- Mandate training on Diversity, Equity, Inclusion, and Justice for all members of the CAG. We are thankful that EPA has committed to securing an external facilitator to help with these matters, but need to see this result in real change in order to feel that the CAG is a space for *all* community members to present and discuss their needs and concerns related to the Superfund decision-making process.
- Insist on standards of acceptable behavior for anything to which EPA lends its name: no bullying, no harassment, no rudeness, no racism, no sexism, and no sustained disruption of discussion.
- Require that the CAG take steps to become more representative of the community it is intended to represent. Following sensitivity training, the CAG must be compelled to create an action plan that will foster a diverse, equitable and representative CAG, including updates to the CAG Charter, as needed.
- Ensure that CAG meetings involving EPA personnel and/or EPA-funded facilitation focus exclusively on Superfund implementation and process, protection of the remedy, and any related natural resource damages assessment (NRDA) planning or implementation.
- EPA should, at least quarterly, provide widely disseminated published updates on the progress of the Gowanus Canal cleanup. This will serve both to broaden the information that the public receives directly from EPA about the cleanup, and to reduce the need for the CAG to meet monthly.

If these steps fail to improve the functioning of the CAG and the behavior of members, then we believe that EPA should withdraw its support for the CAG, and either reconstitute it, or pursue other means of communicating about the cleanup with the broader community. If EPA does not take action that we deem satisfactory, our organizations will see no other recourse but to resign from the CAG, as we don't believe the current situation can or should continue.

From internal conversations, we know that other CAG members beyond our organizations share these concerns, and need your support in order to facilitate a more productive and equitable conversation between EPA and the community. We would be happy to answer any questions you may have, or further discuss our concerns and potential remedies. Thank you for your attention to this matter.

Sincerely,



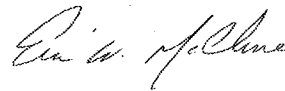
Andrea Parker
Gowanus Canal Conservancy



Chrissy Remein
Riverkeeper



Michelle de la Uz
Fifth Avenue Committee



Eric McClure
Park Slope Neighbors

Cc: Natalie Loney, EPA
Christos Tsiamis, EPA
Brian Carr, EPA
Doug Sarno, CAG Facilitator
Hon. Nydia Velazquez, US House of Representatives
Hon. Jabari Brisport, NYS Senate
Hon. Zellnor Myrie, NYS Senate
Hon. Jo Anne Simon, NYS Assembly
Hon. Marcela Mitaynes, NYS Assembly
Hon. Antonio Reynoso, Brooklyn Borough President
Hon. Alexa Avilés, NYC Council
Hon. Lincoln Restler, NYC Council
Hon. Shahana Hanif, NYC Council

From: Doug Sarno <doug@forumfg.com>

Subject: Re: Results of Yesterday's CAG Meeting and 2 Action Items

Date: December 4, 2022 at 5:37:40 PM PST

To: Triada Samaras [Ex. 6 Personal Privacy (PP)]

Cc: Louis Kleinman [Ex. 6 Personal Privacy (PP)] Eric McClure <emcclure@rolley.com>, Joseph Alexiou

[Ex. 6 Personal Privacy (PP)] Jerry Armer [Ex. 6 Personal Privacy (PP)] Sabine Aronowsky

<Saronowsky@fifthave.org>, Sabine Aronowsky [Ex. 6 Personal Privacy (PP)] Kelsey Butterworth

[Ex. 6 Personal Privacy (PP)] Diane Buxbaum [Ex. 6 Personal Privacy (PP)] Brian Carr

<Carr.Brian@epa.gov>, Michelle de La Llz <mdelauz@fifthave.org>, Eymund Diegel [Ex. 6 Personal Privacy (PP)]

Marlene Donnelly [Ex. 6 Personal Privacy (PP)] Mike Dulong <mdulong@riverkeeper.org>, George Fiala

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<tsiamis.christos@epa.gov>, Sue Wolfe <sue.wolfe@corcoran.com>, Maryann Young

[Ex. 6 Personal Privacy (PP)] Susan Yung [Ex. 6 Personal Privacy (PP)] Cheryl Jamison

[Ex. 6 Personal Privacy (PP)]

Hi, the meetings will be on Zoom, once I have the list I will work directly with the group to design the best meeting times.

I think it is important for everyone to recognize that the CAG is not in a business as usual place right now. The lack of any sort of leadership structure for the CAG makes sorting through these sorts of discussions and decisions challenging. In any other CAG, I would be working with the leadership team to help sort out how to proceed. The CAG needs to be engaged in critical thinking about where we go from here. The working group is an attempt to create some sort of organization about how the CAG needs to be thinking about the issues presented by Cheryl and EPA moving forward.

Given the significance of what EPA is asking from the CAG, it would be my strong suggestion that regular committee work take a break during December and January to allow this process to begin and to have the substantive discussion that will be required at the January meeting to talk about what the overall process will require.

thanks

Doug